

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
November 14, 2008 Session

**TRESSA SUE PETTINATO v. ROD PETTINATO**

**Appeal from the Circuit Court for Wilson County**  
**No. 02-4564DV Clara W. Byrd, Judge**

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**No. M2008-00664-COA-R3-CV - Filed November 24, 2008**

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Husband appeals the trial court's interpretation of a Marital Dissolution Agreement requiring him to continue making certain alimony payments following his involuntary loss of employment. Finding that all alimony payments to Wife cease upon Husband's involuntary termination, the judgment of the trial court is reversed.

**Tenn. R. App. P. 3 appeal as of Right; Judgment of the Circuit Court Reversed**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ. joined.

Martin Sir, Nashville, Tennessee, attorney for the appellant, Rod Pettinato.

J. Yancy Belcher, Mt. Juliet, Tennessee, and John D. Kitch, Nashville, Tennessee, for the appellee, Tressa Sue Pettinato.

**MEMORANDUM OPINION<sup>1</sup>**

This case involves an appeal of the trial court's interpretation of a Marital Dissolution Agreement pertaining to the termination of alimony payments. Finding that the mortgage alimony payments should have been terminated, the judgment of the trial court is reversed.

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<sup>1</sup> Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

## **STATEMENT OF THE CASE**

### **I. Procedural History**

On November 13, 2007, Tressa Pettinato (“Wife”) filed a Petition for Criminal Contempt in the Circuit Court for Wilson County against her ex-husband, Rod Pettinato (“Husband”), for failure to make mortgage payments on the marital residence pursuant to the Marital Dissolution Agreement (“MDA”). On November 15, 2007, the court entered an order requiring Husband to show cause why he should not be held in contempt. On December 17, 2007, Husband filed a motion for summary judgment asking for the petition to be dismissed, arguing that he properly stopped making mortgage alimony payments pursuant to the alimony termination provisions of the MDA. On January 22, 2008, Wife filed a memorandum in opposition to the summary judgment motion.

A hearing was held on January 25, 2008, to discuss the petition and the summary judgment motion; the court entered its order on March 3, 2008. The trial court denied the summary judgment motion and found Husband not guilty of criminal contempt, but ordered him to continue making the mortgage alimony payments and to reimburse Wife for the past mortgage payments missed. The court informed Husband that he would be in criminal contempt if he failed to make future mortgage payments. Husband filed a Notice of Appeal on March 27, 2008.

### **II. Factual Background**

On March 26, 2004, the parties were granted a divorce based on irreconcilable differences; they agreed to an MDA. Paragraph One of the MDA, titled “Real Property,” requires Husband to make payments on the current deed of trust encumbering the marital residence, with all equity in the property going to Wife. This section provides that the Husband’s mortgage payments would be “construed as alimony,” and shall “terminate upon the satisfaction of the current deed of trust or Wife remarrying or cohabitating with another adult person.”

Paragraph Nine of the MDA, titled “Alimony,” states that “[i]n addition to the alimony that is addressed in the paragraph above titled ‘Real Property,’” Husband was required to pay Wife \$1291.00 per month in periodic alimony and \$280.00 per month for medical premiums. This section further provided:

In the event that Husband should involuntarily lose his employment prior to reaching the age of sixty-five (65) and receives no severance package, all alimony payments to Wife shall cease. If Husband receives a severance package, alimony will continue pursuant to this Order until such time as the severance package has been exhausted. Should Husband become re-employed after any such involuntary termination the Court shall revisit the issue of alimony.

On April 28, 2006, Husband was terminated from his employment and given a severance package. Husband continued to make the mortgage and periodic alimony payments to Wife until

the severance package was exhausted and then, relying on the language in Paragraph Nine of the MDA, stopped making both payments.

In her petition, Wife asserted that Husband voluntarily left his employment and, therefore, the alimony termination provision in Paragraph Nine should not apply. Husband filed a summary judgment motion, arguing that he was involuntarily terminated from his job and that he complied with the terms of the MDA in not making alimony payments after the severance package was exhausted. Husband attached an affidavit to the summary judgment motion from the Employee Relations Specialist at his former employer who confirmed that his termination was involuntary.

After a hearing on January 25, 2008, the court found that Husband was involuntarily terminated from his employment<sup>2</sup> and would no longer be liable for the periodic alimony payments pursuant to Paragraph Nine until he becomes re-employed. The court also found, however, that the mortgage alimony payments of Paragraph One were not subject to the alimony termination provisions of Paragraph Nine and, as a result, Husband was required to continue making the mortgage alimony payments following the loss of his employment. Husband appeals the trial court's interpretation of the MDA regarding to the mortgage alimony payments.

### STANDARD OF REVIEW

Review of the trial court's findings of fact is *de novo* upon the record accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Kaplan v. Bugalla*, 199 S.W.3d 632, 635 (Tenn. 2006). Review of the trial court's conclusions of law is *de novo* with no presumption of correctness afforded to the trial court's decision. *See Kaplan*, 199 S.W.3d at 635.

### ANALYSIS

Husband's only issue on appeal is whether the trial court correctly interpreted the MDA in finding that he must continue to make mortgage payments even though he was involuntarily terminated from his employment. Wife asserts that the trial court's interpretation of the MDA was correct and that the mortgage payments do not end upon Husband's involuntary termination. We find that the mortgage payments should have terminated following Husband's involuntary loss of employment; thus, the decision of the trial court is reversed.

"If the language [of a contract] is clear and unambiguous, the literal meaning controls the outcome of the dispute." *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006). "A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one." *Farmers-Peoples Bank v. Clemmer*, 519 S.W.2d 801, 805 (Tenn. 1975).

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<sup>2</sup> Wife does not contest the trial court's finding that Husband's termination from his employment was involuntary.

We find that the language of the MDA clearly and unambiguously subjects the mortgage alimony payments of Paragraph One to the alimony termination provisions of Paragraph Nine. First, Paragraph One clearly states that the mortgage payments “shall be construed as alimony.” Additionally, the first sentence of Paragraph Nine unambiguously states that the terms provided for therein apply, not only to the periodic alimony created in the section, but also “to the alimony that is addressed in the paragraph above titled ‘Real Property.’” Lastly, the pertinent language of Paragraph Nine states that “[i]n the event that Husband should involuntarily lose his employment..., all alimony payments to Wife shall cease.”

We find that this language of the MDA clearly identifies the mortgage payments of Paragraph One to be alimony, and that, as alimony, the payments are subject to the terms of Paragraph Nine. Upon Husband’s involuntary termination from his employment, Paragraph Nine requires that “*all alimony payments* to Wife shall cease.” Thus, Husband’s obligation to pay the mortgage alimony payments should have been terminated following the loss of his employment and the exhaustion of his severance package. In accordance with Paragraph Nine, the court may revisit the issue should Husband become re-employed.

### **CONCLUSION**

For the reasons set forth above, the decision of the Circuit Court is REVERSED and the case is remanded with instructions to enter judgment in accordance with this opinion. Costs are assessed against Wife, for which execution may issue if necessary.

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RICHARD H. DINKINS, JUDGE